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ABSTRACT

A view is presented concerning the Florida Sunshine Law as it applies to the issue of personnel recruitment in higher education administration at state-sponsored institutions. Consideration is given to the literature and personal experience with candidates for a state university administrative position and the associated search committee members. Sunshine laws require public business to be open to the public. It is argued that although total confidentiality of the search process for college administrators is not desirable or necessary, neither is a completely open search process. Two exemptions to sunshine laws are advocated: (1) requiring the release of the names and information about only those candidates under serious consideration; and (2) permitting the search committee, if elected from an appropriate constituency, the right to deliberate in private. This position represents a compromise between extremes and protects the individual rights of both applicants and search committee members without compromising the public's essential right to know. (SW)

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# Searching in the Sunshine:
# Confidentiality in Personnel Recruitment
# in Higher Education Administration in Florida

Diane W. Kazlauskas

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Abstract

All states have sunshine laws intended to represent the best interest of the public by requiring public business and the records pertaining to that business to be open to the public. Sunshine laws challenge personnel recruitment in higher education administration by infringing on individuals' rights of privacy; therefore, some states exempt such personnel recruitment from the scrutiny of the sunshine law. Authors of literature on this subject do not favor conducting searches for college and university administrators, especially college presidents, in a completely open environment. Candidates for a vice presidential position and selected members of the search committee at the University of North Florida say they do not favor completely closed searches. The position of this writer is that although total confidentiality of the search process is not desirable or necessary in choosing administrators in higher education, neither is a completely open search process. Two exemptions to sunshine laws should be allowed: one that would require the release of the names and information about only those candidates under serious consideration and one that would permit the search committee, if elected from an appropriate constituency, the right to deliberate in private. This position represents a compromise between extremes and protects the individual rights of both applicants and search committee members without compromising the public's essential right to know.

Introduction

A sunshine law is a state statute which requires the conduct of public business to be done in open session (Block, 1985a) and the records of public business to be made available for public inspection (Sunshine Law, 1985). Applied to recruitment of state employees, including higher education administrators, a sunshine law requires personnel search committee meetings to be open to the public and all documents pertaining to a personnel search, such as resumes, letters of recommendation, and minutes of meetings, to be available to the public. All states have some form of sunshine law. However, the degree of openness of the law varies from state to state, allowing some states more flexibility in personnel recruitment. Also, some state statutes allow exemptions for particularly sensitive situations, such as searches for top level college administrators. Pennsylvania has the most relaxed sunshine law in the nation in respect to these searches. The State of Florida has the most rigid (Peebles, 1985).

The recruitment of administrators, particularly presidents, in higher education at state owned colleges and universities has given rise to controversy over the proper balance of the public's right to know against the rights of privacy of candidates and the charge of the search committee to be as thorough, effective, and efficient as possible (Peebles, 1985).

In Florida the Sunshine Law has been the subject of debate since it was enacted by the legislature in 1967. There was

precedence for the law in legislation enacted in 1905 which required cities and towns in Florida to hold open meetings. After World War II, the demand for more openness in government increased, although the literature attributes no specific origin to this phenomenon. During the 1950's and 1960's, several western states enacted open meeting laws. In Florida, the main impetus for redefining the open meeting law was the vociferous advocation of the media for more accountability of government beyond the local level. When hearings on the proposed law revealed that one state commission had employed convicted felons, personnel matters, including those at state colleges and universities, were emphasized in the Sunshine Law and the bill passed (Barnes, 1971).

The objective of this paper is to state a position regarding the Florida Sunshine Law as it applies to the issue of personnel recruitment in higher education administration at state-sponsored institutions. The writer will first examine the issue by reviewing the literature and drawing from personal experience with candidates for a state university administrative position and the associated search committee members.

Literature Review

An article in the Chronicle of Higher Education (Peebles, 1985) prompted the writer to undertake further study of the problems of sunshine laws. A computer search of education literature, conducted in January 1986, uncovered eight other articles pertaining to search committees or personnel recruitment; to college administrators including deans and presidents; and to privacy, confidentiality, or

sunshine laws. All nine articles addressed presidential searches specifically if not exclusively. Five of the articles dealt with searches in general, mentioning confidentiality or the sunshine laws (Felicetti, 1984; Nason, 1980; "Presidents Make," 1984; Riesman, 1983; Unglaube, 1983), and four of the articles dealt exclusively with searches and the sunshine laws (Ashworth, 1982; McLaughlin, 1985a; Mclaughlin, 1985b; Peebles, 1985).

Of the nine articles, three discussed the controversy from a completely neutral position (McLaughlin, 1985a; Nason, 1980; Peebles, 1985). All the remaining articles took a negative stance toward searching for college and university administrators without protecting the rights of privacy of both the applicants and the members of the search committee.

The primary objection of the six taking a negative stance toward sunshine laws was the perception that publicity discourages good candidates from applying for positions. The applicant for a top level administrative position in higher education is generally already in a high level position at a college or university. The information that the person is a candidate for another position implies to officials and subordinates that the candidate is unhappy, eroding the candidate's effectiveness and indicating a lack of loyalty which weakened morale at the candidate's current institution (Ashworth, 1982). Publicity, it was argued, becomes a violation of the candidates' rights of privacy (Peebles, 1985). In his article, Ashworth (1982), who at the time was Commissioner of Higher Education in Texas, illustrates this viewpoint with a farcical

dialogue between a potential candidate and a search committee member to show how sunshine laws can actually promote surreptitious search procedures. Ashworth calls the sunshine laws a charade.

Riesman (1983), professor emeritus from a college in New England, argues that privacy is essential to attract good candidates, and supports this position by citing the difficulty Ashworth had with the Texas legislature and the resulting bad publicity he received when he tried to claim exemption from the Texas Open Record Law to protect the privacy of applicants for a position. Riesman's studies with McLaughlin support the contention that some good potential candidates will not apply if applying will expose them to a circus of publicity.

McLaughlin (1983, 1985a), a research associate at a prestigious private university and perhaps the country's leading authority on sunshine laws related to recruitment in higher education, conducted a survey of 65 colleges and universities that were searching for presidents during an eight-month period within 1980 and 1981. The result of McLaughlin's survey would indicate that complete confidentiality increases the applicant pool, expedites the search procedure, and ensures more frank evaluation of the candidates by the search committee. Although McLaughlin takes a neutral position on confidentiality in her research articles (McLaughlin, 1983, 1985a), in another article she details the procedures for and the rewards of absolute confidentiality (McLaughlin, 1985b).

In articles discussing general procedures for recruiting college administrators, Felicetti (1984) and Unglaube (1983), both

of whom have held positions as college deans, also advocate total confidentiality, especially in the recruitment of college presidents. Nason (1980), past president of two small colleges, while taking a less stringent approach to the presidential selection process, notes that the majority of candidates would prefer confidentiality. He does, however, acknowledge that sunshine laws do not allow confidentiality in some states. An article which is attributed to the Association of Governing Boards of Universities and Colleges returns to the position that confidentiality is imperative, stating:

> The greatest damage done to the search process, however, usually occurs once it is underway, if (by law, by practice, by leak, or by investigative reporting) it is thrown open to general public scrutiny of individual names under consideration ("Presidents Make," 1984, p. 30).

Finally, the article by Peebles (1985) presents a journalistic point of view, reporting the issues that have brought the sunshine laws in recruitment in higher education administration into question: the public's right to know weighed against the candidate's right to privacy and the responsibility of the search committee to locate the best possible person in the least amount of time.

None of the articles discussed above favors the sunshine laws in recruitment of administrators in higher education, primarily because the laws are perceived as infringing upon the candidate's right to privacy and thereby keeping some well qualified candidates from applying.

Personal Experience

The writer, in addition to surveying the findings of the

literature, has had an opportunity to speak directly to candidates for the position of Vice President for Academic Affairs at the University of North Florida. The search for an administrator to fill this position has been conducted entirely in the open by a committee of elected members from the university community, and produced six finalists, each of whom was invited to the university for a day of interviews. All members of the university community, of which this writer is one, were invited to meet the finalists, a summary of each finalist's curriculum vitae having been made available to these members. This writer addressed to each candidate, as well as to two members of the search committee, the question "What do you think of the Florida Sunshine Law as it applies to recruitment of administrators in higher education?"

Reactions of those questioned, although mixed, were not as negative as the views in the literature had been. The first candidate to whom the question was posed did not realize the extent of the Sunshine Law in Florida but thought that allowing public access to every part of the search procedure, even to letters of recommendation, was excessive (name withheld, personal communication, February 17, 1986). The second candidate, a Floridian who had extensive experience with the Sunshine Law, could live with the law but thought that it limited the applicant pool and would be moderated after the next gubernatorial election (name withheld, personal communication, February 19, 1986). The third candidate (name withheld, personal communication, February 20, 1986) and the fourth candidate (name withheld, personal communication,

February 24, 1986), the latter an in-house candidate, each knew the extent of the statute and had no problems with it. The fifth candidate described the law as a mixed blessing which limited the number of candidates but made those who did apply more honest (name withheld, personal communication, February 25, 1986). The final candidate knew people who had decided not to apply for positions because of sunshine laws and therefore favored moderation of the laws (name withheld, personal communication, March 6, 1986).

The two members of the search committee also differed in their attitudes toward the Sunshine Law. One committee member wholly endorsed the concept of complete openness in searching for administrators in higher education, saying that if a candidate hesitated to apply for a position because of the exposure that might result, it was the candidate's problem, not the state's (name withheld, personal communication, February 14, 1986). The other committee member thought that the Sunshine Law actually promoted sub rosa discussion and decision making (name withheld, personal communication, February 17, 1986). The writer did not poll the other ten members of the committee because of scheduling limitations.

In summary, four of the candidates interviewed said that they thought the state's Sunshine Law should be modified or moderated primarily because the law limited the number of perspective candidates for positions in higher education administration. Two of the candidates said that they were satisfied with the law as it was. The two members of the search committee who were interviewed

were also divided in their opinion of the Sunshine Law. None of the candidates or members of the search committee, however, considered total confidentiality necessary or desirable to recruiting administrators in higher administration.

Position

This study of confidentiality in personnel recruitment in higher education administration found a range of positions from wholehearted endorsement of full disclosure (name withheld, personal communication, February 14, 1986) as required by the Florida Sunshine Law, to advocacy of total confidentiality (McLaughlin, 1985b) as made possible by exemptions to the Pennsylvania sunshine statute (Peebles, 1985). The writer finds both positions excessive.

The Sunshine Law should not be rendered impotent by exceptions or eliminated completely because it does help assure that government business will be conducted honestly. In spite of this, the writer cannot dismiss the views of those authors and candidates cited who think that the extent of the Florida Sunshine Law actually erodes the welfare of the population it is intended to serve by inhibiting personal freedom, and therefore the writer takes the position that it should be modified.

It is easy to draft a scenario, as did Ashworth (1982), to illustrate a situation in which a college administrator is tempted to apply for an advertised position but hesitates to do so because of some of the repercussions. This scenario would reflect the attitudes of the officials to whom the hesitant candidate presently reports as well as the subordinates whose confidence the candidate

must maintain to continue to perform effectively during the search procedure and afterwards, should the candidacy prove unsuccessful. It is likewise easy to construct a scenario in which a person hesitates to be on a search committee or, once on a committee, becomes not necessarily less honest but less forthright, because of the open nature of the search.

The Sunshine Law should be amended to include two exemptions that would help protect the rights of individuals without infringing on the public's right to know. The first exemption is one that would require public disclosure of the names and application documents of only those applicants under serious consideration. In the recent vice presidential search at the University of North Florida, about 200 applicants were screened to secure the six people who were interviewed (A. Farkas, personal communication, February 14, 1986). Although the potential for misuse of the names or application documents of those persons eliminated may have been minuscule, it seems unnecessary for their names and documents to have been made publicly available, and it is difficult not to suspect that some well qualified people were dissuaded from applying by the potential for disclosure of their names.

A second exemption that should be incorporated into the Florida Sunshine Law is one that would allow a search committee, whose members have been elected by the body seeking an administrator, to meet in closed session to protect the privacy of the individual members. Since a committee makes decisions as a unit, it is the committee decisions that are significant, not the votes and opinions

of individual members. Individual votes and opinions of elected committee members should not be subject to public scrutiny.

If these two exemptions were included in the Florida Sunshine Law, search committees could work more effectively from a larger pool of more highly qualified candidates without compromising the public's right to know essential information, namely who the finalists were and how the committee voted as a unit.

Summary

All states have sunshine laws that require public business and the record of that business be open to the public. These laws challenge personnel recruitment in higher education administration by infringing on individuals' rights of privacy; therefore, some states exempt such personnel transactions from the scrutiny of sunshine laws. Authors of literature on this subjects do not favor conducting searches for college and university administrators, especially presidents, in a completely open environment. Candidates for a vice presidential position and selected members of the search committee at the University of North Florida say they do not favor completely closed searches. The position outlined by this writer represents a compromise which protects the rights of privacy of both candidates and search committee members without compromising the public's essential right to know.

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